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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH**

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THE SCO GROUP, INC.

Plaintiff/Counterclaim-Defendant,

v.

INTERNATIONAL BUSINESS  
MACHINES CORPORATION,

Defendant/Counterclaim-Plaintiff.

**[PROPOSED] ORDER GRANTING  
SCO'S MOTION FOR RELIEF  
FOR IBM'S SPOILIATION OF  
EVIDENCE**

Case No. 2:03CV0294DAK

Honorable Dale A. Kimball  
Magistrate Judge Brooke C. Wells

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Plaintiff/Counterclaim-Defendant, The SCO Group ("SCO"), filed its Motion for Relief for IBM's Spoliation of Evidence on September 25, 2006. For the reasons set forth in SCO's Motion and Memorandum, and for good cause showing, this Court GRANTS SCO's Motion for Relief for IBM's Spoliation of Evidence. Pursuant to this Order, IBM is hereby precluded from

contesting that it relied on AIX and Dynix/ptx source code in making contributions to Linux development. Furthermore, an adverse-inference instruction shall be entered against IBM, consistent with the common-sense and well-established principle that a party who has notice that evidence is relevant to litigation and who proceeds to destroy it is more likely to have been threatened by that evidence than a party in the same position who does not destroy the evidence.

IT IS SO ORDERED

DATED this \_\_\_\_ day of \_\_\_\_\_.

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Dale A. Kimball, District Judge